Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Conference on Accounting Issues	)	WC Docket No. 02-269
	)	
2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase II	)	CC Docket No. 00-199
	)	
Jurisdictional Separations Reform and Referral to the Federal-State Joint Board	)	CC Docket No. 80-286
	)	
Local Competition and Broadband Reporting	)	CC Docket No. 99-301

REPLY COMMENTS OF THE
UNITED STATES TELECOM ASSOCIATION

Pursuant to the Notice of Proposed Rulemaking issued by the Federal Communications Commission (FCC or the Commission)[1] and pursuant to sections 1.415 and 1.419 of the FCC's rules,[2] the United States Telecom Association (USTA),[3] hereby submits these reply comments in response to the comments filed by numerous parties

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[1] *Federal-State Joint Conference on Accounting Issues; 2000 Biennial Regulatory Review–Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase II; Jurisdictional Separations Reform and Referral to the Federal-State Joint Board; Local Competition and Broadband Reporting,* Report and Order in WC Docket No. 02-269, CC Docket Nos. 00-199, 80-286, and 99-301, Notice of Proposed Rulemaking, FCC 03-326 (rel. Dec. 23, 2003).
[2] 47 C.F.R. §§1.415 and 1.419.
[3] USTA is the Nation's oldest trade organization for the local exchange carrier industry. USTA's carrier members provide a full array of voice, data and video services over wireline and wireless networks.

regarding the report issued by the Federal-State Joint Conference on Accounting Issues (Joint Conference) detailing proposed modifications to the FCC's regulatory accounting and related reporting requirements.[4] USTA disagrees with those who argue that the Commission has the authority to maintain or implement accounting and reporting requirements solely for the benefit of the states. USTA maintains that the FCC does not have the authority to maintain or implement regulations unless they serve a federal purpose and, in fact, has a legal duty to repeal regulations that no longer serve a federal purpose. Those arguing for more stringent regulation fail to provide evidence that such regulation advances a federal purpose. Finally, state commissions, themselves, presented very little evidence in this proceeding that they need additional federal accounting regulations.

DISCUSSION

In the 2000 biennial review, the FCC found that there was no federal need for many of its accounting and reporting requirements and eliminated them.[5] The majority of those commenting in this proceeding took the position that the FCC should not undo the reforms it previously implemented. For example, Sprint Corporation (Sprint) states, "any further reform of the federal accounting rules and ARMIS reporting requirements is

[4] *Federal-State Joint Conference On Accounting Issues*, Recommendation by Joint Conference, WC Docket No. 02-269 (rel. Oct. 9, 2003) (Joint Conference Report).
[5] *See 2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase II; Amendments to the Uniform System of Accounts for Interconnection; Jurisdictional Separations Reform and Referral to the Federal-State Joint Board; Local Competition and Broadband Reporting,* Report and Order in CC Docket Nos. 00-199, 97-212, and 80-286, Further Notice of Proposed Rulemaking in CC Docket Nos. 00-199, 99-301, and 80-286, CC Docket Nos. 00-199, 97-212, 80-286, and 99-301 (rel. Nov. 5, 2001) (Phase II Order).

unwarranted."[6] Sprint goes on to say that it is unaware of any allegations that the accounting and reporting reforms implemented by the FCC created holes in the federal regulatory accounting regime that allow carriers to be less than thorough and truthful.[7] Qwest Corporation (Qwest) says, "The Joint Conference's recommendations, if accepted, would 'turn back the clock' on the Commission's accounting simplifications and regulatory reform efforts."[8] USTA, along with Verizon Communications, Inc. (Verizon), BellSouth Corporation (BellSouth), and SBC Communications Inc. (SBC) agree that the FCC should not now revisit and undo the decisions it made in the 2000 biennial review.[9] BellSouth points out that changes in the industry call into question the need for any of the recommendations of the Joint Conference.[10] "Not only is there competition," BellSouth says, "but also digital technologies are changing the way telecommunications services are delivered, and the current and proposed regulatory requirements are based on

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[6] Sprint Comments at 2.
[7] *Id*.
[8] Qwest Comments at 14.
[9] *See, e.g*., USTA Comments at 3-4; Verizon Comments at 2; BellSouth Comments at 3; and SBC Comments at 2- 3 ("Rather than focusing on whether the existing rules are sufficient to ensure that accounting data filed with the Commission is adequate, truthful and thorough to meet the Commission's current regulatory needs, the Joint Conference has sought to turn back the clock on the accounting and reporting reforms adopted little more than two years ago. In so doing, the Joint Conference offers no explanation why the existing rules are insufficient to achieve legitimate federal regulatory objectives. Nor does it explain how the public interest would be furthered by re-imposing burdensome and market-distorting accounting and regulatory reporting requirements on companies that have no way been implicated in the fraudulent accounting schemes of WorldCom and others that led to the establishment of the Joint Conference in the first place. Indeed, the only justifications proffered are vague references to the needs of state regulatory commissions.").
[10] BellSouth Comments at 3.

technologies that are rapidly being replaced."[11] Furthermore, Verizon argues, "The rules that the Commission already has eliminated are not necessary to achieve a *federal* purpose."[12]

Those who argue for more stringent regulation fail to provide specific evidence that such regulation advances a federal purpose. AT&T Corp. (AT&T) even argues that a federal purpose is not necessary at all. AT&T states in its comments, "the Act does *not* preclude the Commission from implementing regulatory accounting measures that primarily, or even solely, benefit the states."[13] This statement incorrectly ignores the statutory limits on the FCC's jurisdiction. The FCC cannot legally implement and maintain regulatory accounting requirements simply because state regulators need or would use the information obtained as a result of such requirements. As USTA emphasized in its comments, the Communications Act of 1934, as amended (the Act), limits the regulatory authority and reach of the FCC to matters of interstate and foreign commerce in communication and prohibits the FCC from exercising authority over intrastate communications.[14] Furthermore, USTA argued, the FCC, itself, has concluded that if it cannot identify a federal need for regulation, then it is not justified in maintaining such a requirement at the federal level.[15]

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[11] *Id*. *See also* USTA Comments at 3 n.5, citing statistics from the FCC's Wireline Competition Bureau showing the growth of intermodal competition from carriers using cable, wireless, and IP facilities, as well as the growth of competition from facilities-based CLECs and those using unbundled network elements.
[12] Verizon Comments at 5.
[13] AT&T Comments at 10.
[14] *See* 47 U.S.C. §151 and §152(b). *See also* USTA comments at 4-6.
[15] *See* Phase II Order, para. 207. *See also* USTA Comments at 4-5.

AT&T argues that because Congress required the FCC to consult with states when adopting regulatory accounting standards, Congress intended the FCC to prescribe regulations for the benefit of the states.[16] This is a misreading of Section 11, which does not involve prescribing regulations unique to states but requires the repeal and modification of regulations that no longer further the public interest.[17] AT&T then goes on to incorrectly assert that Section 11 of the Act does not require the FCC to eliminate accounts that are used solely by the states.[18] As Qwest points out, it is not a proper construction of Section 11 to focus almost exclusively on states' needs in determining whether the public interest is being served.[19] In so doing, Qwest says, "the Joint Conference's recommendations basically ignore the Congressional mandate of Section 11 of the Act."[20] USTA agrees with Qwest that the current proceeding has lost sight of the requirements of Section 11.[21]

Furthermore, the Joint Conference's focus on states' needs seems ill-advised not only because the FCC lacks authority to implement or maintain regulations solely for the benefit of states[22] but also because there does not appear to be a groundswell of state

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[16] AT&T Comments at 10.
[17] *See* 47 U.S.C. §161. Section 11 of the Act requires the FCC to review its regulations every two years to determine which regulations are "no longer necessary in the public interest." This requirement has just recently been held to mean that the FCC must "reevaluate regulations in light of current competitive market conditions to see that the conclusion [it] reached in adopting the rule – that [the rule] was needed to further the public interest – remains valid." *See Cellco Partnership v. FCC*, No. 02-1262, 2004 U.S. App. 2413, page 7 (D.C. Cir. Feb. 13, 2004).
[18] AT&T Comments at 10.
[19] Qwest Comments at ii.
[20] *Id*. at iii.
[21] *See Id*. at 4.
[22] *See* USTA Comments at 4-6. USTA emphasized in it comments that (1) the FCC's regulatory reach does not include intrastate communication, (2) the FCC, itself, has

support for additional federal accounting rules to serve states' needs. The Public Service Commission of Wisconsin (Wisconsin Commission) was the only state commission to file comments in this proceeding, and the Wisconsin Commission indicated that, in several instances, it was able to obtain the information it needed without federal accounting rules and regulations[23] and may not even require maintenance of some of the accounts recommended by the Joint Conference.[24] Given the dearth of evidence presented by state commissions showing a need for federal accounting and reporting regulations, the FCC should not implement the Joint Conference's recommendations.

CONCLUSION

The FCC should not reinstate or reconsider regulatory accounting requirements that it has already eliminated or streamlined. To do so would be contrary to the goal of decreasing unnecessary regulation, toward which the Commission is required to strive. For the foregoing reasons, USTA urges the FCC to refrain from reinstating or reconsidering regulatory accounting requirements that it previously eliminated or

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concluded that if it cannot identify a federal need for regulation, then it is not justified in maintaining such a requirement at the federal level, and (3) the FCC's specific biennial review obligations trump any requirements that the FCC consider the needs of state commissions when prescribing regulations.

[23] *See, e.g.,* Wisconsin Commission Comments at 8-9. In its docket 05-US-113, Final Decision, the Wisconsin Commission decided that while the FCC USOA did not require maintenance of these accounts for Class B ILECs, the Wisconsin Commission would require Class B ILECs to report this information in the ILEC annual reports filed with the Wisconsin Commission. In its docket 05-US-113, Final Decision, the Wisconsin Commission adopted a six-year data retention requirement for selected revenue accounts. The Wisconsin Commission also adopted separate reporting in its ILEC annual report for selected revenue items to the extent necessary to allow the identification of assessable revenues for remainder, intrastate telephone relay, and intrastate universal service assessments.

[24] *See* Wisconsin Comments at 13, stating, "The Wisconsin Commission is not requesting separate accounts/subaccounts for USF-related activity at this time."

streamlined or adding new regulatory accounting requirements and to move forward with the next phase of its accounting proceeding.

Respectfully submitted,

UNITED STATES TELECOM ASSOCIATION

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CERTIFICATE OF SERVICE

I, Indra Sehdev Chalk, do certify that on February 17, 2004, the attached Reply Comments of the United States Telecom Association were filed electronically with the Commission through its Electronic Comment Filing System and were electronically mailed or sent by regular mail, first class, postage prepaid mail to the persons listed below.

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